NOTICE OF THE OFFICE FOR THE PROTECTION OF COMPETITION ON COMPLIANCE PROGRAMMES DATED 1/1/2024

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PREAMBLE

Office for the Protection of Competition (hereinafter referred to as "the **Office**") is aware of the importance of the prevention of competition infringements and appreciates the efforts of undertakings to put in place tools to increase their awareness of their rights and obligations in this area. Therefore, to strengthen prevention and support the implementation of these measures, the Office has changed its previous practice and started to recognise the enhancement of existing compliance programmes and newly introduced competition compliance programmes[1] of undertakings[2] as a mitigating circumstance, when imposing a fine, if certain conditions are met, given the fact that undertakings cooperate with the Office in the course of the administrative proceedings under the Leniency programme and/or the settlement procedure.

Previous practice has shown that setting up efficient preventive measures through a compliance programme may be difficult for undertakings. Therefore, the Office has adopted this Notice providing basic information on the conditions under which it will take into account the undertakings' efforts to set or enhance internal compliance rules within the functioning of the undertaking towards the prevention of competition infringements as a mitigating circumstance when imposing a fine.

The Office stresses that its policy or discretion degree in this area is primarily focused on ensuring that undertakings themselves are able to prevent anti-competitive conduct. This should primarily ensure that compliance programmes are not established only in the context of ongoing proceedings before the Office, but earlier as a preventive measure. The Office's consideration of the extent to which the fine may be reduced as a result of the compliance programme is based on this basic principle.

[1] Hereinafter, wherever the term compliance programme is used in this Notice, it shall always represent such programmes or its part relating to the prevention of distortions of competition.
[2] The provisions contained in this Notice shall be applied adequately on associations of undertakings.

I. COMPLIANCE PROGRAMMES IN COMPETITION LAW

1. In general, competition compliance programmes represent sets of efficient preventive measures focused on raising awareness of competition law and potentially problematic conduct consisting of possible infringements of competition rules, together with procedures to avoid the infringements, at all levels of the undertaking, i.e. from regular employees to middle and senior management.
2. Compliance programmes include a system of internal measures and procedures for preventing, detecting and responding to possible anti-competitive conduct. Disciplinary measures also represent a standard part of compliance programmes and are applied in the event of a breach of compliance provisions.
3. Compliance programmes shall always be individually adapted to the specific undertaking in order to be efficient and fulfil their function.

II. BASIC CONDITIONS AND PRINCIPLES FOR CONSIDERING COMPLIANCE PROGRAMMES TO BE A MITIGATING CIRCUMSTANCE WHEN SETTING A FINE

4. In the course of the administrative proceedings, undertakings may request the Office to consider whether the enhancement of their existing compliance programme or the newly introduced one might be qualified as a mitigating circumstance when imposing a fine.
5. The request to consider the compliance programme as a mitigating circumstance when imposing a fine, including all the documents listed below, shall be submitted to the Office before the Statement of Objections is issued.[3] Delayed requests, information and documents will not be taken into account by the Office.
6. The request for consideration of the compliance programme shall include:
   a) reasoning why the compliance programme is efficient enough for the undertaking in question in respect to the prevention of competition infringements,
   b) exact wording of all competition-related parts of the compliance programme; and
   c) description of specific measures related to the enhancement or implementation of the new compliance programme, indicating whether these measures have already been implemented or in what timeframe they will be implemented.
7. The undertaking bears the burden of proof as to the suitability and efficiency of the enhanced or implemented compliance programme.

[3] The Office shall state in the Statement of Objections whether it has accepted the proposed compliance programme, indicating the expected reduction of the fine.

8. The Office shall recognise a compliance programme as a mitigating circumstance where the following conditions are cumulatively met:
   a) the enhanced or newly implemented compliance programme has to be **efficient** enough in respect to the size and market power of the undertaking and the type of market in which it operates,[4]
   b) **efficient use of Leniency programme and/or settlement procedure**[5] in the course of the administrative proceedings conducted by the Office and simultaneously,
   c) in case the **compliance programme has been already in place**, there has been no anticompetitive conduct **with the awareness of the undertaking's statutory bodies or senior management.**[6]
9. In case the Office concludes that the undertaking's proposed compliance measures are sufficient and the undertaking commits in writing to adopt and set up a new efficient compliance programme no later than before the first instance decision is adopted, the Office shall consider it as a **mitigating circumstance** when setting the fine by **reducing the amount of the fine by up to 5%**. In determining the specific percentage of the fine reduction, the Office shall take into consideration particularly the undertaking's approach to the introduction and implementation of the submitted compliance programme (e.g. speed, suitability, level of implementation), its quality (e.g. chosen form, sophistication, comprehensiveness) and the extent of the Office's possibility to assess its effective, specific and continuous implementation. Generally, in order to obtain a reduction of the fine for a newly implemented compliance programme, a full written version of the programme and an implementation schedule including the current status of such process within the undertaking shall be submitted to the Office.
10. Compliance programmes adopted and implemented prior to the opening of the Office's investigation, which have proved to be less than fully efficient (failing to detect and stop infringements immediately), however could be considered sufficient enough within the meaning of this Notice, may be considered as a **mitigating circumstance** and eligible for a **reduction of up to 10 % of the amount of the fine**, provided that the undertaking modifies the compliance programme accordingly and starts implementing it after the initiation of the administrative proceedings. In its assessment, the Office shall take into consideration how the undertaking's existing compliance programme has been

[4] For further reference see the part III. of the Notice.
[5] Notice of the Office for the Protection of Competition of 29/7/2023 on the application of § 22ba of the Act on the Protection of Competition, Leniency Programme, https://www.uohs.cz/download/Legislativa/HS/CR/Oznameni-UOHS-o-leniency-ucinne-od-29.-7.-2023-.pdf; Notice of the Office for the Protection of Competition of 29/7/2023 on the settlement procedure pursuant to Article 22bb of the Act on the Protection of Competition, https://www.uohs.cz/download/Legislativa/HS/CR/Oznameni-UOHS-o-narovnani-ucinne-od-29.-7.-2023-.pdf.
[6] In principle, the Office shall consider the statutory bodies, representatives of the shareholders and top managers of the undertaking (managing director, member of the board of directors, supervisory board, proxy, company director and other top managers) as senior management. For example, a manager responsible for the complex management of a certain territory or product will be considered as senior management. On the other hand, the head of a team of sales representatives will not be considered as senior management. The assessment of such request shall be done on case-by-case basis.

established, applied, why and at what level it has been infringed and the measures put in place to enhance it.

11. The Office shall not take into account only formally adopted but not actually implemented compliance programmes which are not in fact applied and complied with by undertakings. In this respect, the Office should be provided not only with the wording of the compliance programme itself, but also with evidence of its active implementation.[7]

12. In order to accept a compliance programme as a mitigating circumstance, all the programmes adopted and implemented by the parent company (also applied to subsidiaries or within the entire holding) and individually by the subsidiaries that are parties to the proceedings shall be considered.[8]

III. APPROACH OF THE OFFICE TO EFFICIENCY ASSESSMENT OF THE COMPLIANCE PROGRAMMES

13. Efficiency assessment of the compliance programme in the context of possible reduction of the fine shall be conducted by the Office in each case on an ad hoc basis, taking into account in particular the nature, size and resources of the specific undertaking and the level of risk that competition could be infringed by its illegal conduct.

14. The following recommendations related to the efficiency assessment of the compliance programme should not be considered as an exhaustive list. They merely express the general approach and considerations of the Office which it intends to follow in the course of the assessment.

15. The compliance programme does not necessarily, in all cases, need to contain all the measures listed below in order to be considered efficient. The Office always assesses the efficiency of submitted compliance programmes on an ad hoc basis in respect to the specific undertaking. In the course of the compliance programme efficiency assessment, the Office shall be more lenient towards SMEs.

III.1 Compliance programme – form, content and scope

16. In order to ensure that the compliance programme would be actually adhered, it is not sufficient enough to simply lay down compliance rules, but it is necessary to establish a compliance programme within the undertaking, respectively establish an awareness of its statutory representatives, managers and employees of the compliance rules that must be followed in order to achieve an overall pro-competitive corporate culture, or to minimize the risk of anti-competitive behaviour.

17. To ensure clarity, the compliance programme should be laid down in written form, e.g. in the form of a guideline, which should contain general features of competition law, its purpose and a description of the basic types of anti-competitive conduct. Competition law

[7] List of employee training, compliance monitoring, compliance officer activities, records of actions taken against employees who do not comply with the programme, etc.

[8] Compliance programme, that would be implemented in all companies forming one undertaking, shall be considered to be more efficient by the Office than compliance programme implemented only by some of the companies forming single undertaking.

enforcement should also be explained and the possible effects of different types of anti-competitive conduct should be stressed, including the penalties that an undertaking and possibly specific natural persons[9] could face in case of non-compliance with competition rules. At the same time, it is highly recommended to include information and procedures regarding on-site inspections the Office may conduct and information on the potential application of the Leniency programme and settlement procedure. All employees who may possibly distort competition within the performance of their duties should be aware of the reasons for the introduction of the compliance programme, its importance and the necessity to comply with it, as well as the penalties for the breach of the compliance programme, so that they are motivated not to infringe the set-up rules.

18. It is essential that not only top management, but generally the entire senior management of the undertaking is involved in the implementation of the compliance programme. In respect to the compliance programme, or to ensure its efficiency, the management of the undertaking should make a clear and public statement externally and also internally emphasising that compliance with competition law is not just a legal obligation but a central element of the undertaking's corporate culture and its responsibility to customers, suppliers and consumers. Undertakings may use different communication channels, such as a magazine, newsletter or other, and regularly inform about the compliance programme and the necessity to comply with it.
19. When establishing a compliance programme, undertakings should make a statement on their website that they operate in accordance with their compliance programme, comply with all competition legal provisions and apply this approach in all their business relations.
20. To maintain the efficient compliance programme, monitoring and regular auditing shall be carried out as these are effective tools for preventing and detecting anti-competitive behaviour within the undertaking and are useful for updating the compliance programme.

III.2 Compliance measures

21. The following list covers the most typical examples of measures recognised by the Office as efficient and proven tools to follow competition rules in compliance programmes and their implementation. If undertakings intend to include new measures to enhance their compliance programmes, it is advisable to inform the Office in advance so that it can assess whether the measures themselves and their implementation can be considered efficient and adequate.
22. For each measure, it should be specified how and in which areas, at what time, and, where appropriate, in what order and frequency, it has been or will be implemented by the undertaking.

III.2.1 Risk assessment in relation to competition law infringements

23. An efficient compliance programme should be able to identify, analyse and assess in a particular manner the risks to which the undertaking and each of its constituent units is

[9] Entering into a cartel agreement can represent a criminal offence of a natural person.

exposed. It should as well contain measures to reduce or eliminate those risks and prevent them, including penalties for competition law infringements.

24. In the course of the risk assessment the following aspects should be considered:
    a) the undertaking's business sector, business processes and persons within the organisation most exposed to potential infringements of competition law,
    b) the probability that the infringements will occur and
    c) the impact of the infringement on the undertaking and its employees (penalties for the undertaking and its management, weakening of the undertaking's credibility and reputation, prohibition to enter into public contracts, damages, legal costs, etc.).
25. The risk assessment should be updated whenever a situation occurs that involves new risks to the undertaking (e.g. acquisition, new business cooperation, change of ownership, entry into a new market, development of a new line of business, etc.).

III.2.2 Regular and efficient training

26. For a practical application of the compliance programme, it is highly recommended to regularly train both the undertaking's management and its employees at least once a year.[10] Employees who, as part of their job, are considerably exposed to the risk of potential anti-competitive conduct (e.g. employees who are frequently in contact with representatives of other undertakings) should be particularly aware of the competition rules and the measures put in place by the compliance programme with regard to the identified risks.
27. Areas of particular risk should be stressed. For example, if the undertaking has regular contacts with its competitors at management or employee level, it may emphasise the prohibition of cartel agreements. For better understanding of employees, it is also possible to specify the topics that they can discuss with other undertakings, and especially topics that are inadmissible or obviously illegal, such as current or future pricing, resale price maintenance and price enforcement, market sharing, intention to participate or not to participate in a tender (or even information on bids that undertakings plan to submit), or the exchange of any competitively sensitive information.

III.2.3 Supervision of compliance program (compliance officer) and disciplinary system

28. Internal reporting mechanisms (i.e. internal information channels) should be established for the successful implementation and operation of an efficient compliance programme within the undertaking. Employees have to know who and how to contact if they suspect possible anti-competitive conduct. For this purpose, the establishment of a compliance officer may also be recommended, especially for large undertakings. In case of undertakings falling into the category of small or medium-sized enterprises (with fewer than 50 employees), it is generally sufficient to ensure the practical application of the compliance programme through regular training and provision of information to employees.

[10] The training can be conducted in the form of e-learning.

29. Well-established internal mechanisms should enable management to take appropriate action immediately. If an employee or a member of management staff discovers or merely suspects a violation of competition law, the compliance programme should provide specific guidance on how to proceed.[11] An undertaking's environment that motivates and encourages employees to speak out when they have information about possible illegal conduct is critical to the efficiency of a compliance programme.

30. An effective compliance programme should clearly set out a contact point (in an online environment, a website or email) where employees can request an advice if they have concerns about the competition law compliance of an undertaking or the company they work for.

31. An efficient compliance programme can be linked to an internal reporting system,[12] which is also required by the Act No. 171/2023 Coll., on the protection of whistleblowers, in a company with more than 50 employees. It is essential that this channel includes the possibilities and means of reporting alleged infringements of competition law. However, it should be ensured that the whistleblower is protected from possible retaliatory measures, or that anonymity can be preserved, as this can contribute significantly to the efficiency of the programme.

32. The compliance programme should also contain measures to ensure the supervision and monitoring of adherence to the undertaking's compliance policy by individual employees, especially managers, and to establish quantifiable and verifiable measures for this purpose. Such a measure may include simulated situations with the incriminated defective conversation.

33. It is also advisable to introduce disciplinary measures resulting from risky decisions that are sufficiently clear, e.g. specifying the situations in which disciplinary sanction may be imposed, which may also result in the dismissal of those responsible.[13]

IV. FINAL PROVISIONS

34. The Notice shall come into force on 1 January 2024 and shall apply to all administrative proceedings initiated after its entry into force.

[11] For example, if an undertaking identifies provisions in its framework agreements or terms and conditions (especially in a B2B relations) that are not in accordance with competition law, these agreements and terms and conditions should be revised and the change should be transparently communicated to all its business partners.
[12] These channels are generally considered to be helpful in detecting infringements; anyone who has received training can detect a breach of competition law and bring it to the attention of the person responsible for the system or directly to the Office.
[13] In this context, an undertaking may, for example, cite cases it has encountered in its recent past and respond adequately and pro-competitively.